

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**BENTON COUNTY SANITARY
LANDFILL;
Permit No. 06-SDP-02-81P**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2010-SW- 07

**TO: David Thompson
Benton County Attorney
111 East 4th Street
Vinton IA 52349**

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Benton County to bring the Benton County Sanitary Landfill into compliance with applicable regulations.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Brian Jergenson, Env. Specialist
Field Office #1
Iowa Department of Natural Resources
909 West Main St., Suite 4
Manchester, Iowa 52349
Ph: 563-927-2640

Relating to this Order to:

Jon C. Tack, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8889

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Benton County owns and operates a sanitary landfill at 7904 20th Avenue, Blairstown in Benton County, Iowa pursuant to DNR permit No. 06-SDP-02-81P. The Landfill is a municipal solid waste landfill subject to 567 IAC chapter 113.
2. On August 24, 2006, the DNR and Benton County entered into Administrative Consent Order No. 2006-SW-12. This order was executed to resolve violations related to improper use of alternative cover, inadequate leachate management, failure to comply with regulations related to yard waste handling, failure to provide adequate daily cover, failure to properly control surface water runoff, and other violations as documented therein. Benton County was also required to pay a \$6,000 penalty.
3. On March 29, 2007, the DNR documented inadequate daily cover and a failure to properly manage blowing litter at the Benton County Sanitary Landfill.
4. On April 7, 2008, the DNR again documented inadequate daily cover and a failure to properly manage blowing litter at the Benton County Sanitary Landfill. At that time it was observed that no daily cover had been applied. A landfill employee confirmed that no daily cover had been applied that week. Also, a large number of seagulls were observed on the working face. It was also determined at this time that the landfill needed to be surveyed to determine current elevations. Leachate seeps were observed during this inspection.
5. On April 21, 2008, the DNR investigated and documented leachate seeps at the Benton County Sanitary Landfill. Sample results indicated that the illegal leachate releases were impacting a nearby creek. The daily cover violations observed on April 7th had not been corrected at that time.
6. On April 30, 2008, the DNR met with representatives of Benton County. On that date, there were at least 20 turkey vultures on the working face, leachate seeps had not been corrected, and offsite litter had not been collected or prevented from blowing offsite.
7. On July 8, 2008, the DNR issued a Notice of Violation to Benton County based upon the three inspections completed in April of 2008.
8. On September 3, 2008, the DNR documented leachate seeps at the Benton County Sanitary Landfill.
9. On February 4, 2009, the DNR documented violations related to inadequate cover at the Benton County Sanitary Landfill.

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10. On July 15, 2009, the DNR documented that the previously observed leachate seeps had not been corrected or otherwise addressed by Benton County.
11. On October 7, 2009, the DNR documented violations at the Benton County Sanitary Landfill including the improper use of alternative cover materials, a failure to properly control storm water, and improper yard waste handling at the Benton County Sanitary Landfill.
12. On October 26, 2009, the DNR documented violations at the Benton County Sanitary Landfill including improper use of alternative cover materials, failure to address the previously observed leachate seeps, and a failure to complete a required survey and the accompanying staking.
13. On November 2, 2009, the DNR documented that the previously observed violations at the Benton County Sanitary Landfill had not been addressed or otherwise corrected.
14. On November 3, 2009, the DNR issued a Notice of Violation based upon the failure to complete a required survey and place monuments, inadequate daily and intermediate cover, failure to comply with alternative cover requirements, illegal leachate seeps, and general noncompliant operation by the certified operators at the Benton County Sanitary Landfill.
15. On November 18, 2009, the DNR inspected the Benton County Sanitary Landfill and found that cover was being properly managed and applied but that the leachate seeps had not been corrected.
16. On December 18, 2009, County Engineer Myron Parizek submitted a letter to the DNR indicating steps taken by Benton County to achieve compliance with DNR permit No. 06-SDP-02-81P.
17. On Monday May 27, 2010, the DNR conducted an inspection of the Benton County Sanitary Landfill. The inspection arose from a complaint alleging that Benton County had not applied daily cover during the preceding weekend. The inspection was conducted prior to the start of operations. It was apparent at that time that daily cover had not been applied for several days. There were approximately 20 turkey vultures eating on the working face at the time of inspection. At that time landfill employee Mike Gardeman was asked about the measures taken by Benton County to address leachate seeps at the landfill and he informed the DNR that no such action had been taken.
18. On June 7, 2010, the DNR issued a Notice of Violation based upon the failure to apply daily cover as required by law.
19. on October 14, 2010, the DNR issued a permit amendment authorizing the Benton County Sanitary Landfill to begin filling in their newly constructed landfill cell.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123. The Commission has adopted 567 IAC 113 to provide for the regulations of municipal solid waste landfills.

2. Pursuant to Iowa Code section 455B.302 every city and county of this state shall provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under section 455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents.

3. The following rule provisions are applicable to the Benton County Landfill:

113.8(2) a. *Survey controls and monuments.* Survey controls and monuments shall be maintained as follows.

(1) The property boundary, the permitted boundary and the boundaries of all MSWLF units shall be surveyed and marked by a professional land surveyor at least once prior to closure.

(2) Prior to waste placement, all new MSWLF unit boundaries shall be surveyed and marked by a professional engineer.

(3) Survey monuments shall be established to check vertical elevations and the progression of fill sequencing. The survey monuments shall be established and maintained by a professional land surveyor.

(4) All survey stakes and monuments shall be clearly marked.

(5) A professional engineer shall biennially inspect all survey monuments and replace missing or damaged survey monuments.

113.8(2) f. *Cover material and alternative cover material.* Pursuant to 567—Chapter 108, alternative cover material of an alternative thickness (e.g., tarps, spray covers) may be authorized if the owner or operator demonstrates to the approval of the department that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Cover material or alternative cover material shall be available for use during all seasons in all types of weather. Cover material and alternative cover material shall be utilized as follows unless otherwise approved by the department pursuant to 567—Chapter 108:

(1) Daily cover. Six inches of cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging.

(2) Intermediate cover. At least 1 foot of compacted cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive more waste for at least 30 days. At least 2 feet of compacted cover material or alternative cover material shall be placed

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and maintained over waste in the active portion that has not or will not receive waste for at least 180 days. Such active portions shall be graded to manage run-on and runoff pursuant to subrule 113.7(8). Such active portions shall be seeded if they will not receive waste for a full growing season.

(3) Scarification of cover. To help prevent leachate seeps by aiding the downward flow of leachate, cover material or alternative cover material, which prevents the downward flow of leachate and is at least 5 feet from the outer edge of the MSWLF unit, shall be scarified prior to use of that area as a working face. Cover material or alternative cover material that does not impede the downward flow of leachate, as approved by the department, does not require scarification. Scarification may be as simple as the spearing or breaking up of a small area of the cover. Areas of intermediate cover may require removal of some of the cover material or alternative cover material to aid the downward flow of leachate.

(4) Final cover. Final cover over an MSWLF unit that is to be closed shall be constructed and maintained according to the closure and postclosure requirements of rules 113.12(455B) and 113.13(455B).

113.8(2)g. Leachate seeps. Leachate seeps shall be contained and plugged upon being identified. Leachate seeps shall not be allowed to reach waters of the state. Soils outside of the MSWLF unit that are contaminated by a leachate seep shall be excavated and then disposed of within the MSWLF unit. Such soils may be used for daily cover.

The Department has documented violations of these rules by Benton County

4. Pursuant to Special Provision No. 10 of DNR permit No. 06-SDP-02-81P Automobile Shredder Residue (ASR) is approved for acceptance for use as alternative cover material. The permit amendment requires mixing ASR with soil so long as the ratio of ASR to soil shall not exceed 50% ASR by volume. The DNR has documented violations of this provision.

V. ORDER

The DNR and Benton County agree and Benton County is hereby ordered to do the following:

1. Benton County shall comply at all times with the requirements of 567 IAC chapter 113 and DNR Permit No. 06-SDP-02-81P.
2. By January 1, 2011, Benton County shall conduct a survey of the landfill in compliance with rule 113.8(2) "a", replace or repair all survey monuments, and shall submit a report to the DNR detailing the results of the survey.
3. By January 1, 2011, Benton County shall submit proof of payment of an

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administrative penalty in the amount of \$10,000. This penalty may be satisfied by the payment of \$10,000 to the Benton County Conservation Board for use in Supplemental Environmental Projects (SEPs) pursuant to the contract between the Department and the Benton County Conservation Board.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to the provisions of chapter 10, the DNR has determined that a penalty of \$10,000 is the appropriate means to achieve compliance.

a. Economic Benefit. Benton County has achieved an economic benefit from the failure to comply with the applicable landfill regulations. Economic benefits include the avoidance of labor and material costs to maintain adequate cover over solid waste, to correct and prevent leachate seeps, to provide soil and mix such soil with alternative cover materials, and to pay for the surveying and staking of the landfill. The DNR has determined the minimum economic benefit penalty that can be assessed to resolve this matter consensually is \$6,000.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The regulations related to the maintenance of sufficient cover material are designed to protect the groundwater and surface water of the state. The failure to provide adequate cover creates a likelihood of contamination of the waters of the state. The failure to correct and prevent leachate seeps has been documented to be causing actual impacts on a water of the state. In order to resolve this matter consensually, only \$2,000 is assessed for this factor.

c. Culpability. Benton County has repeatedly failed to comply with the minimum legal requirements for the operation of a sanitary landfill. A prior administrative order and penalty have failed to result in compliance. The facts of this case show a willful intent to violate the law. In order to resolve this matter consensually, only \$2,000 is assessed for this factor.

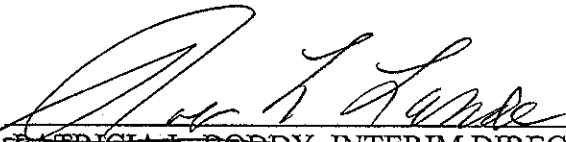
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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.308 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Benton County. By signature to this Order, all rights to appeal this Order are waived.


VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order.



~~PATRICIA E. BODDY, INTERIM DIRECTOR~~
IOWA DEPARTMENT OF NATURAL RESOURCES
Roger L. Lande

Dated this 15~~th~~ day of
March, 2010



_____, chairman
BENTON COUNTY BOARD OF SUPERVISORS

Dated this 28 day of
December, 2010

Field Office #1; Jon Tack; Matt Phoenix; VI B(2)(c); VI B(2)(d); VI B(2)(e)